IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

Crl.Rev.Pet.No. 4156 of 2006(D)

CRA.302/2006 of SESSIONS COURT, THRISSUR
CC.729/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, WADAKKANCHERY

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REVN. PETITIONER - ACCUSED:

LATHEEF, CONVICT NO.5252,
CENTRAL PRISON, VIYYUR
(S/O. KOYA, ASAKKATTU HOUSE,
KANJIRAKODU DESOM & VILLAGE
TALAPPILLY TALUK.

BY ADV. SRI.LIJU V.STEPHEN(STATE BRIEF)

RESPONDENT - COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI MOHAMED PUZHAKKARA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 4156 OF 2006

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Dated this the 5th day of January, 2007

O R D E R

Accused in C.C. No. 729 of 2004 on the file of the Judicial First Class Magistrate, Wadakkancherry is the Revision petitioner. Revision petitioner was found guilty of an offence punishable under Sections 457 and 380 of the Indian Penal Code, convicted and sentenced to undergo rigorous imprisonment for 3 years under Section 457 IPC and rigorous imprisonment for 2 years under Section 380 IPC. The sentences imposed were directed to run consecutively. Set off was also allowed. Petitioner filed Crl. Appeal No.302 of 2006 before the Sessions Court, Thrissur. Learned Sessions Judge dismissed the appeal confirming the findings of the learned Magistrate. Hence this Criminal Revision Petition filed by the convict through the Superintendent of Central Prison, Viyyur.

2. Since petitioner is unable to engage a counsel of his choice, Shri Liju V.Stephen is appointed as counsel on State Brief to argue the case of revision petitioner. Criminal Revision

Petition is heard and disposed of after hearing counsel for petitioner and Public Prosecutor.

3. It is argued that courts below went wrong in finding that it was revision petitioner who committed theft of the Idol and other articles. It is argued that police framed the charge against the petitioner with a mala fide intention of protecting the husband of P.W.2 and also P.W.3.

4. Prosecution case was that revision petitioner trespassed into the sanctum sanctorium of Ayyappa Temple by name Kodumbu and committed theft of Idol, metal made Aura and vessels used at the time of poojas. The incident occurred between 7.30 p.m. on 4.10.2004 and 5.30 a.m. on 5.10.2004. Specific case was that revision petitioner trespassed into the temple at about 1.30 a.m. of 5.10.2004 and committed theft of the articles in question.

5. It is true that there was no direct evidence to connect revision petitioner with the offence alleged. Revision petitioner was arrested at about 11.00 a.m. on 6.10.2004. Initially he confessed that stolen articles are kept in a place very near to the

house in which his father and others were residing. In pursuance of that confession, he was taken to that site. Idol alone was recovered from there. Further he confessed that other articles are kept in another place. In pursuance of the information furnished by the petitioner, those articles were also seized.

6. To prove the incident, prosecution relied on the oral evidence of P.Ws.1 to 4. P.W.1 is the Priest of the Temple. He deposed that on 4.10.2004 at about 7.30 p.m. he closed the temple after poojas in the evening were over. On 5.10.2004 when he opened the temple at about 5.30 a.m. he noticed that the Idol, metal made Aura and other vessels used for poojas were stolen. He further deposed that immediately he informed the Trustee of the temple about theft. He also deposed that all articles kept in the sanctum sanctorium were found scattered. He deposed that police had recovered a pair of chappal, shirt, umbrella, etc., from the place of occurrence. He identified some of the articles seized by police and also one of the articles stolen. P.W.2 deposed that at about 12 midnight, P.W.3 along with the accused came to her house and made enquiries regarding her

husband. At that time her husband was not in the house. She did not open the door of house and asked accused and P.W.3 to go away. She further deposed that accused left the place but P.W.3 sat there till her husband came. She also deposed that on the next day morning when she opened the door of house she noticed that bulb fitted in the veranda of house and an umbrella were missing. She further deposed that when accused came to her house he was under the influence of liquor. P.W.3 deposed that in the evening on 4.10.2004 he met the accused. The petitioner invited him for consuming liquor. At about 9.00 p.m. they went to the house of P.W.2 so as to get some water. He deposed that P.W.2's husband was not in the house and they did not get water. Petitioner left the place but he sat in the veranda. He further deposed that at about 00.30 hours husband of P.W.2 came and called him. His shirt, umbrella, chappals, bulb fitted in the veranda were found missing. He further deposed that on the next day when he went to a tea shop for a cup of tea he came to know that a theft took place in a temple. He went to the temple and saw chappals, umbrella, bulb, etc., lying near

the temple. He further deposed that he was not having a watch and he was illiterate also. P.W.5 is an attester to Exhibit P3 mahazar under which the stolen articles were seized. He proved the mahazar and deposed that in pursuance of the information furnished by the accused police party took accused to the place where the Idol was kept. Petitioner took the Idol and handed over it to police. He was not cross-examined. Exhibit P3 and the confession statement were also properly proved. P.W.6 is an attester to Exhibit P4 mahazar under which the metal made Aura and other vessels used for poojas were seized. P.W.8 arrested accused and questioned him.

7. Evidence of P.Ws.5, 6 and 8 along with the confession statement, properly proves beyond reasonable doubt that Idol stolen from the temple was seized in pursuance of the confession made by the accused. The only inference possible from the proved facts is that those articles were stolen by the accused himself. Theft took place in the early morning of 5.10.2004 and accused was arrested on 6.10.2004. Courts below had concurrently found that it was the revision petitioner who

committed theft of the articles. I do not find any ground to upset those findings of fact based on good evidence. Findings of the courts below that petitioner was guilty of the offences punishable under Sections 457 and 380 IPC are correct and only to be confirmed. Petitioner was sentenced to undergo rigorous imprisonment for 3 years under Section 457 IPC and 2 years under Section 380 IPC. The sentences were directed to run consecutively. Considering the facts and circumstances of the case, I am of the view that a lenient view can be taken regarding sentences imposed and the same can be directed to run concurrently. So while dismissing this Criminal Revision Petition, I hold that sentences imposed on the revision petitioner under Sections 380 and 457 IPC shall run concurrently. He is entitled to set off also.

8. Criminal Revision Petition is dismissed.

Office is directed to communicate a copy of this order to the

Superintendent of Central Prison, Viyyur.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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O R D E R

5TH JANUARY, 2007